

UNITED STATES DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
OFFICE OF THE CHIEF ADMINISTRATIVE HEARING OFFICER

November 7, 1997

UNITED STATES OF AMERICA,	)	
Complainant,	)	
	)	8 U.S.C. § 1324a Proceeding
v.	)	
	)	OCAHO Case No. 97A00138
R. MARLIN MANUFACTURING AND	)	
DISTRIBUTING, INC.,	)	
Respondent.	)	
	)	

MEMORANDUM OF PREHEARING CONFERENCE

On November 5, 1997 at 12:30 p.m. (EST), a telephonic prehearing conference was held in this matter. Appearing on behalf of the complainant were Monica M. Little and J. Stephen Butcher, and on behalf of respondent was Rick Marlin.

During the conference, the respondent admitted the factual allegations alleged in Counts I through V. Concerning Count I, the respondent acknowledged that on or about June 9, 1992 he learned that Jesus Bustos Wences was unauthorized for employment but that Wences continued to work until at least March 3, 1993. Concerning Counts II through IV, respondent acknowledged that errors were made in the I-9 forms, but contended that the errors were minor and the proposed fines excessive. Concerning Count V, respondent's answer admitted that Marlin was unable to locate an I-9 form for Danh Cao Hua.

The remaining issues for determination involve setting the appropriate civil money penalties. There are five statutory factors that I must consider in computing a penalty for a § 1324a violation: (1) the size of the employer, (2) the employer's good faith, (3) the seriousness of the violations, (4) whether the individuals were aliens unauthorized to work, and (5) the previous history of violations. 8 U.S.C. § 1324a(e)(4).

Both parties will be asked to file written submissions discussing the applicable factors in determining the fine. In order to facilitate this discussion, INS shall fax to the respondent a list of whatever tax and payroll documents it needs to enable it to analyze the factors, and Marlin will provide those documents. INS has already sent the respondent a set of documents with accompanying requests for admission. Marlin will review the documents and respond within 30 days either admitting or denying each request. If Marlin fails to respond to the requests, the

complainant may use the appropriate methods set forth in the OCAHO Rules of Practice and Procedure, 28 C.F.R. Part 68, to have them deemed admitted.

Another prehearing conference will be arranged in approximately six weeks in order to establish a timetable for further proceedings.

Both parties are also encouraged to engage in good faith settlement discussions.

SO ORDERED.

Dated and entered this 7th day of November, 1997.

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Ellen K. Thomas  
Administrative Law Judge

CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of November, 1997, I have served copies of the foregoing Memorandum of Prehearing Conference on the following individuals at the addresses indicated:

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Cynthia A. Castañeda  
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